THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 23394 of 2003

Date 21.09.2005

Between:

Smt. Kamala Bai, W/o.Sri Ram Lal,
Plot No.221, Lakashminarasimha Colony, Yousufguda, Hyderabad.

..... PETITIONER

AND

The Second Appellate Authority, Under Sec. 48(3) of A.P.,
Shops & Establishment Act and Deputy Commissioner of Labour, (Twin cities)
Hyderabad & others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 23394 OF 2003

O R D E R:

Questioning the order passed by the first respondent in I.A.No.7 of 2003 in S.A.No.10 of 2003, dated 17.10.2003, the present writ petition is filed.

Facts, to the extent necessary for this writ petition, are that the petitioner was appointed as Sweeper-cum-Scavanger on 01.02.1991 and worked as such with the third respondent till 01.03.2001 when her services were orally terminated. Challenging the oral order of termination, the petitioner moved the second respondent under Section 48(1) of A.P.Shops and Establishments Act (hereinafter referred to as 'the Act'). The second respondent, by order dated 09.09.2002, set aside the order of termination, holding that the said order was

in violation of the provisions of the Act. The petitioner sought implementation of the order and in the meanwhile, the third respondent filed I.A.No.7 of 2003 under Section 48(3) of the Act to condone the delay of 121 days in filing the second appeal. The first respondent/appellate authority, condoned the delay. Challenging which, the present writ petition is filed.

Sri S.Ravindranath, learned counsel for the petitioner, would submit that under Section 48 (3) of the Act, an appeal to the Deputy Commissioner of Labour, is required to be preferred within a period 30 days from the date of communication of the order passed by the Assistant Commissioner of Labour and that the Deputy Commissioner had no jurisdiction to entertain an appeal beyond the prescribed time limit of 30 days. Learned counsel would rely on the Full Bench judgment of this Court in **NALGONDA CO-OPERATIVE MARKETING SOCIETY LTD. V. LABOUR COURT, HYDERABAD,** in this regard.

Sri V.Hari Haran , learned counsel for the third respondent, would, however, seek to sustain the impugned order in view of the subsequent judgments of the Supreme Court in **MUKRI GOPALAN V. C.P.ABOOBACKER** and the Division Bench of this Court in **MAHENDRA KUMAR GOYAL V. ADDL. COMMISSIONER OF CIVIL SUPPLIES**, wherein it was held that the earlier Full Bench judgment of this Court in Nalgonda Co-operative Marketing Society Ltd.'s case (1 supra) was not applicable. The first respondent followed the judgment of the Division Bench of this Court in Mahendra Kumar Goyal's case (3 supra), condoned the delay in filing the appeal of 121 days and directed the main case in S.A.No.10 of 2003 to be posted for hearing.

In Nalgonda Co-operative Marketing Society Ltd.'s case (1 supra), which arose under the A.P.Shops and Establishments Act, 1966, the Full Bench of this Court held that the Labour Court was not a Court within the meaning of the Limitation Act, an appeal preferred under the Act could not be equated to an appeal under the Code of Civil Procedure and therefore, the provisions of the Limitation Act were not applicable with regard to condonation of delay in filing the appeal. The Full Bench held that, since the A.P.Shops and Establishments Act is a self-contained code, having regard to the scheme and nature of the remedies provided under the Act and the rules made therein, it had to be held that the application, of the provisions of Section 5 of the Limitation Act, to filing

of appeals under the Act and the rules, has, by necessary implication been excluded and therefore, the Labour Court did not have jurisdiction to entertain any appeal beyond the time prescribed in the Act itself.

Sri S.Ravindranath, learned counsel for the petitioner, would submit that while the Labour Court was earlier the appellate authority under the Act, the appellate authority now is the Deputy Commissioner of Labour and the judgment of the Full Bench in Nalgonda Co-operative Marketing Society Ltd.'s case (1 supra), would apply to appeals before the Deputy Commissioner of Labour also and would disentitle the authority from entertaining any appeal beyond the 30 days time limit prescribed.

Sri V.Hari Haran, learned counsel for the third respondent, would, however, place reliance on the judgment of the Supreme Court in Mukri Gopal (2 supra) and the Division Bench judgment of this Court in Mahendra Kumar Goyal's case (3 supra) to submit that in view of Section 29(2) of the Limitation Act, 1963, Sections 4 to 24 of the said Act were applicable to proceedings not only before the Civil Court, but also before other authorities, which exercise judicial or quasi-judicial powers, provided two conditions are satisfied, namely (1) that the special or local law does not exclude the operation of the Limitation Act; and (2) that the limitation prescribed under the special or local law is different from what is prescribed under the schedule to the Limitation Act. Learned counsel would submit that the A.P.Shops and Establishments Act does not exclude operation of the Limitation Act and the limitation prescribed under the Act, for preferring appeals, is 30 days, which is different from the limitation prescribed under the Limitation Act. Since both the conditions are satisfied, Section 29(2) of the Limitation Act would apply, pursuant to which, Sections 4 to 24 of the Limitation Act would become applicable and the Deputy Commissioner of Labour, (Appellate Authority), would have the power to condone the delay in preferring the appeal beyond the prescribed limit of 30 days.

I find considerable force in this submission of the learned counsel for the third respondent. The provisions of the Act does not exclude application of the Limitation Act nor does the Limitation Act prescribe the same period of limitation of 30 days for preferring appeals under Section 48 (3) of the Act. Since both the conditions stipulated in Section 29(2) of the Limitation Act are

satisfied, by the provisions of the A.P.Shops and Establishments Act, Sections 4 to 24 of the Limitation Act would apply and the appellate authority must be held to have the power to condone the delay, for just and valid reasons, in preferring the appeals under the Act, in view of the law laid down by the Supreme Court in Mukri Gopal's case (2 supra) and the Division Bench of this Court in Mahendra Kumar Goyal's case (3 supra). The order of the first respondent, relying on the subsequent Division Bench judgment in Mahendra Kumar Goyal's case (3 supra) and following the judgment of the Supreme Court in Mukri Gopalan's case (2 supra), is upheld, and the challenged thereto, in the present writ petition, is rejected.

Learned counsel for the petitioner would refer, to paragraph 4 of the affidavit filed in support of the writ petition, and contend that appellate authorities under the Act were passing different orders. While in some cases, appeals were rejected on the ground that they did not have the power to condone the delay, appeals were entertained in other cases upon condoning the delay in preferring the appeals. In the case on hand, the order of the first respondent, in condoning the delay, is upheld as legal and valid. The question, whether authorities were justified in condoning the delay in other cases, does not arise for consideration in this writ petition nor is it necessary for this Court to go into these questions. In any event, it is now made clear that the appellate authority, under the Act, has the power to condone the delay, for just and valid reasons, in preferring appeals under the Act.

The writ petition fails and is accordingly dismissed. No order as to costs.

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21.09.2005

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